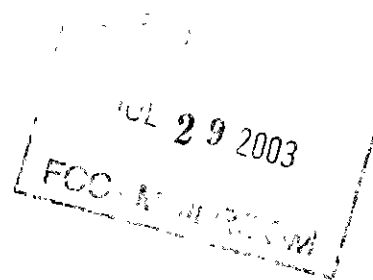




Pennsylvania Association of REALTORS®

The Voice for Real Estate® in Pennsylvania

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July 21, 2003

K. Dane Snowden
Chief, Consumer & Governmental Affairs Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

AUG 6 2003

Distribution Center

Dear Mr. Snowden

In reviewing the recent report and regulations issued by the Federal Communications Commission, staff and counsel for the Pennsylvania Association of REALTORS® has observed that there are a number of inconsistencies between the FCC regulations and the current incarnation of Pennsylvania's Telemarketer Registration Act. In light of these inconsistencies we believe that extending the FCC regulations beyond interstate telemarketing activities and attempting to regulate intrastate calling practices will result in a difficult maze of enforcement and compliance issues as REALTORS® seek to engage in their legitimate business practices.

As much as Congress may have intended to have the FTC and FCC enter the regulatory arena on the issue of telemarketing, it is difficult to believe that Congressional intent extended to having the Commission supplant state law and regulation over telemarketing activities that are conducted solely within a state's own borders. This is particularly so when the Commission's regulations don't completely preempt state laws and regulations, but instead create a hodge-podge in which certain provisions from state law will continue to apply when many others have been effectively preempted. Having just spent a considerable amount of time and resources to educate our members on how to properly comply with the Pennsylvania Telemarketer Registration Act, it will be doubly difficult to now explain that our members must compare and contrast the two regulatory schemes to decide when each applies.

A grid highlighting many of the differences between the FCC regulations and Pennsylvania law is included for your reference. We would ask that this information be included in your report to Congress.

Please do not hesitate to call me with any questions about the enclosed grid.

Sincerely,

David D. Reel, C.A.F.
Executive Vice-President

cc: Ted Stefan, Jr., GRI, President, Pennsylvania Association of REALTORS®
James L. Goldsmith, Esq., Counsel, Pennsylvania Association of REALTORS®
Jeanne Delgado, National Association of REALTORS®



**Inconsistencies Between FCC Do Not Call Regulations
and Pennsylvania Telemarketer Registration Act**
(List may not be comprehensive, and applies only to current version of PA statute.)

Submitted by Pennsylvania Association of REALTORS®

FCC Regulations	PA State law
"Telemarketer" and "telemarketing" defined, in part, as an entity that "initiates a telephone call or message"	Telemarketing defined to include a "plan, program or campaign" of telephone solicitations
Prohibits "unsolicited advertisement" sent to any fax machine	No prohibition of fax solicitations. No definition of "unsolicited advertisement," as the term is not used
Requires written permission for consumer to "opt-in" if consumer wishes to receive advertisements to fax machine, or to give permission to receive telephone calls from a specific telemarketer if otherwise enrolled on the national Do Not Call list	No "opt-in" permission necessary for faxes. PA law allows telephone calls with "express request" by consumer, but does not define that term to require written permission
"Telephone solicitation" does not include (1) calls made with express permission, (2) calls to a consumer with whom there is an established business relationship, and (3) by or behalf of a tax-exempt nonprofit organization	PA law also permits exemption for calls made "in reference to existing debt, contract, payment or performance" PA law does not contain exemption for "personal relationship"
Permission to call based on "established business relationship" extends to 18 months after a purchase or transaction	Permission to call based on "established business relationship" extends to 12 months after a purchase or transaction
Established business relationship exception applies to calls made within 3 months of an inquiry or application	In response to an inquiry, established business relationship extends to 3 months, but only if telemarketer has obtained permission to continue the relationship past the initial inquiry
Permits consumer to terminate the established business relationship, for purposes of telemarketing, with a request to be placed on a company-specific Do Not Call list	No specific provisions for terminating the established business relationship
Explicitly applies to cellular phones	Applies to "residential telephone subscribers," which has not generally been interpreted as including cellular telephones
Requires transmission of caller identification information and prohibits blocking of that information	Prohibits blocking of caller identification information, but does not require transmission
Extensive regulation of telephone solicitations made by machine or with a recorded voice, including disconnects	No distinction between live and recorded calls, except that callers may not provide a 900 number as the required contact information
Company-specific Do Not Call requests do not apply to affiliated companies unless consumer "reasonably would expect" that the affiliated company would be included in the request	No discussion of applicability to any entity other than the entity placing the call
Telemarketer must obtain a consumer's prior express permission to share consumer's Do Not Call request with any party other than an affiliated party	No discussion of providing Do Not Call request to any other entity, whether affiliated or not
No specific regulations regarding contracts resulting from telemarketing contacts	Extensive regulation of form and content of contracts resulting from telemarketing contacts, as well as requirements for record keeping in certain financial transactions